

**AMENDED COMPLAINT**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT COURT OF NEW YORK

CASE NO.  
 19-CV-1438  
 DIAZ V. SMITH

**FORM TO BE USED IN FILING A COMPLAINT  
 UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983  
 (Prisoner Complaint Form)**

**1. CAPTION OF ACTION**

**A. Full Name and Prisoner Number of Plaintiff:** *NOTE: If more than one plaintiff files this action and seeks in forma pauperis status, each plaintiff must submit an in forma pauperis application and a signed Authorization or the only plaintiff to be considered will be the plaintiff who filed an application and authorization.*

MIGUEL DIAZ #18A2702

-VS-

**B. Full Name(s) of Defendant(s)** *NOTE: Pursuant to Fed. R. Civ. P. 10(a), the names of all parties must appear in the caption. The court may not consider a claim against anyone not identified in this section as a defendant.*

1. <u>ERIC J. SMITH</u>	2. <u>ADAM J. GALLAGHER</u>
3. <u>GABRIEL ORBEGOZO</u>	4. <u>JOSHUA TULIP</u>
5. <u>ERIC E. MARSHALL</u>	6. <u>ROBERT J. LAMICA II</u>

**2. STATEMENT OF JURISDICTION**

This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), and 2201.

**3. PARTIES TO THIS ACTION**

**PLAINTIFF'S INFORMATION** *NOTE: To list additional plaintiffs, use this format on another sheet of paper.*

Name and Prisoner Number of Plaintiff: MIGUEL DIAZ #18A2702

Present Place of Confinement & Address: CLINTON CORRECTIONAL FACILITY  
PO BOX 2000, DANNEMORA N.Y 12929.

Name and Prisoner Number of Plaintiff: \_\_\_\_\_

Present Place of Confinement & Address: \_\_\_\_\_

NAME OF DEFENDANT ADAM J. GALLAGHER

POSITION OF DEFENDANT CORRECTIONS OFFICER FOR DOCS

DEFENDANT SUED IN INDIVIDUAL ✓ CAPACITY

ADDRESS OF DEFENDANT UPSTATE CORRECTIONAL FACILITY - PO BOX 2000, MALONE N.Y 12953.

NAME OF DEFENDANT JOSHUA TULIP

POSITION OF DEFENDANT CORRECTIONS OFFICER FOR DOCS

DEFENDANT SUED IN INDIVIDUAL ✓ CAPACITY

ADDRESS OF DEFENDANT UPSTATE CORRECTIONAL FACILITY PO BOX 2000, MALONE N.Y 12953.

NAME OF DEFENDANT ROBERT J. LAMICA II

POSITION OF DEFENDANT CORRECTIONS OFFICER FOR DOCS

DEFENDANT SUED IN INDIVIDUAL ✓ CAPACITY

ADDRESS OF DEFENDANT UPSTATE CORRECTIONAL FACILITY PO BOX 2000, MALONE N.Y 12953

NAME OF DEFENDANT GERALDINE M. WILSON

POSITION OF DEFENDANT NURSE FOR DOCS

DEFENDANT SUED IN INDIVIDUAL ✓ CAPACITY

ADDRESS OF DEFENDANT UPSTATE CORRECTIONAL FACILITY PO BOX 2000, MALONE N.Y 12953

NAME OF DEFENDANT JAMES B. TROMBLEY

POSITION OF DEFENDANT CORRECTIONS OFFICER FOR DOCS

DEFENDANT SUED IN INDIVIDUAL ✓ CAPACITY

ADDRESS OF DEFENDANT UPSTATE CORRECTIONAL FACILITY PO BOX 2000, MALONE N.Y 12953.

NAME OF DEFENDANT GARY GETTMANN  
POSITION OF DEFENDANT LUTENANT FOR DOCCS  
DEFENDANT SUED IN INDIVIDUAL ✓ CAPACITY  
ADDRESS OF DEFENDANT UPSTATE CORRECTIONAL FACILITY  
PO BOX 2000, MALONE N.Y 12953

NAME OF DEFENDANT DONALD G. UHLER  
POSITION OF DEFENDANT SUPERINTENDANT FOR DOCCS  
DEFENDANT SUED INDIVIDUAL ✓ CAPACITY  
ADDRESS OF DEFENDANT UPSTATE CORRECTIONAL FACILITY  
PO BOX 2000, MALONE N.Y 12953

NAME OF DEFENDANT TREVOR N. DUNNING  
POSITION OF DEFENDANT SARGUENT FOR DOCCS  
DEFENDANT SUED INDIVIDUAL ✓ CAPACITY  
ADDRESS OF DEFENDANT UPSTATE CORRECTIONAL FACILITY  
PO BOX 2000, MALONE N.Y 12953

NAME OF DEFENDANT BRYAN I. LACLAIR  
POSITION OF DEFENDANT CORRECTIONS OFFICER, FOR DOCCS  
DEFENDANT SUED INDIVIDUAL ✓ CAPACITY  
ADDRESS OF DEFENDANT UPSTATE CORRECTIONAL FACILITY  
PO BOX 2000, MALONE N.Y 12953

NAME OF DEFENDANT STACY DOMONIC  
POSITION OF DEFENDANT CAPTION FOR DOCCS  
DEFENDANT SUED INDIVIDUAL ✓ CAPACITY  
ADDRESS OF DEFENDANT UPSTATE CORRECTIONAL FACILITY  
PO BOX 2000, MALONE N.Y 12953



NAME OF DEFENDANT S. SALLS

POSITION OF DEFENDANT LIEUTENANT FOR DOCCS

SUED IN INDIVIDUAL ✓ CAPACITY

ADDRESS OF DEFENDANT UPSTATE CORRECTIONAL FACILITY

PO BOX 2000, MALONE N.Y 12953

**DEFENDANTS INFORMATION NOTE:** *To list additional defendants, use this format on another sheet of paper.*

Name of Defendant: ERIC J. SMITH  
(If applicable) Official Position of Defendant CORRECTIONS OFFICER  
(If applicable) Defendant is Sued in ✓ Individual and/ or \_\_\_\_\_ Official Capacity  
Address of Defendant: UPSTATE CORRECTIONAL FACILITY - PO BOX 2000  
MALONE N.Y 12953

Name of Defendant: GABRIEL ORBEGOZO  
(If applicable) Official Position of Defendant CORRECTIONS OFFICER  
(If applicable) Defendant is Sued in ✓ Individual and/ or \_\_\_\_\_ Official Capacity  
Address of Defendant: UPSTATE CORRECTIONAL FACILITY - PO BOX 2000  
MALONE N.Y 12953

Name of Defendant: ERIC E. MARSHALL  
(If applicable) Official Position of Defendant CORRECTIONS  
(If applicable) Defendant is Sued in ✓ Individual and/ or \_\_\_\_\_ Official Capacity  
Address of Defendant: UPSTATE CORRECTIONAL FACILITY - PO BOX 2000  
MALONE N.Y 12953

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#### **4. PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT**

Have you begun any other lawsuits in state or federal court dealing with the same facts involved in this action? Yes ✓ No \_\_\_\_\_

If Yes, complete the next section. NOTE: *If you have brought more than one lawsuit dealing with the same facts as this action, use this format to describe the other action(s) on another sheet of paper.*

Name(s) of the parties to this other lawsuit:

Plaintiff(s): MIGUEL DIAZ #18A2702

Defendant(s): (DOCCS)

2 Court (if federal court, name the district; if state court, name the county): COURT OF CLAIMS, ALBANY N.Y 12224

Docket or Index Number: 13770 AND 13899

Name of the Judge whom case was assigned: RICHARD E. SISE



A. FIRST CLAIM: On (date of incident) 2-22-19  
 defendant (give the name and position held of each defendant involved in this incident) ERIC J. SMITH,  
GABRIEL ORBEGOZO, ERIC E. MARSHALL, STACY DOMONIC, BRYAN T.  
LECLAIR, JAMES B. TROMBLEY, GARY GETTMAN, DONALD G. UHLER, TREVOR N.  
DUNNING, ROBERT J. LAMICA, ADAM J. GALLAGHER, JOSHUA TULIP.

did the following to me (briefly state what each defendant named above did): ON 2-22-19, I WAS  
PHYSICALLY & SEXUALLY ASSAULTED BY THESE OFFICERS! ERIC J. SMITH  
SEXUALLY ASSAULTED ME BY VIOLENTLY PULLING ON MY PENIS & SCROTUM  
SACK, BRUISING AND BREAKING SKIN. ALL THE OTHERS TOOK PARTS IN

#2 ASSAULTS / EXCESSIVE FORCE ON ME, BREAKING MY NOSE, KNOCKING  
MY TEETH LOOSE, STITCHES TO MY EYE LID, STITCHES TO MY EYE BROWE,  
BRUISES AND LACERATIONS TO 70% OF MY FACE, AND 60% OF MY  
BODY! WHILE BEATING ME TO A PULP TWICE WHILE CUFFED FOR NO  
JUSTIFIABLE REASON, WHILE CALLING ME A SPIC, SAYING WE HATE

YOU NIGGERS & SPICS. ALL MY INJURIES ARE BACKED BY HOSPITAL  
DOCUMENTS, AND PHOTOS! SGT. T. DUNNING, CAPT. DOMONIC, LT GETTMANN ALL  
WATCHED, WHILE SGT. DONALD G. UHLER GAVE ORDERS! (NOTE) AFTER  
THE FIRST ASSAULT RN. GERALDINE M. WILSON, DISPIE THERE BEING A  
HOLE IN MY EYE LID THE SIZE OF A NICKLE BLEEDING! SENT ME BACK  
TO MY CELL, WHEN I SHOULD'VE WENT TO THE HOSPITAL! SETTING THE STAGE  
FOR THE 2ND ASSAULT, IN WHICH I WAS SEXUALLY ASSAULTED, AND GOT  
MORE MAJOR INJURIES! ALL THE DEFENDANTS WERE INVOLVED, AND  
I HAVE THE EVIDENCE WITH PHOTOS TO PROVE IT! (ATTACHED)

EIGHTH, FIFTH, FOURTEENTH AMENDMENT

The constitutional basis for this claim under 42 U.S.C. § 1983 is: SEXUAL ASSAULT, EXCESSIVE  
FORCE, PAIN & SUFFERING, MENTAL ANGUISH, SCARED FOR LIFE, RACIST HATRED,  
EQUAL PROTECTION, FORGING GOVERNMENT DOCUMENTS.  
ATTEMPTED MURDER, CARE CUSTODY CONTROLLE, FAILURE TO PROTECT.  
 The relief I am seeking for this claim is (briefly state the relief sought): TWO HUNDRED

MILLION DOLLARS.

#### Exhaustion of Administrative Remedies

According to 42 U.S.C. § 1997e(a), "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Did you grieve and/or appeal this claim:

Yes ☒ No ☐

If your answer is yes, state the result: DENIED

Did you appeal that decision:

Yes ☒ No ☐

If your answer is yes, state the result: DENIED

The approximate date the action was filed: MAR/APR - 2019

What was the disposition of this case?

Is it still pending? Yes ☒ No ☐

If not, give the approximate date it was resolved. \_\_\_\_\_

Disposition (check the boxes which apply)

- ☐ Dismissed (check the boxes which indicates why it was dismissed):
- ☐ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;
  - ☐ By court for failure to exhaust administrative remedies;
  - ☐ By court for failure to prosecute, pay filing fee or otherwise Respond to a court order;
  - ☐ By court due to voluntary withdrawal of claim;
  - ☐ Judgment upon motion or after trial entered for
    - ☐ plaintiff
    - ☐ defendant

Have you begun **any other lawsuits in federal court which relate to your imprisonment?**  
Yes \_\_\_\_\_ No ☒

If Yes, complete the next section. NOTE: If you have brought more than one other lawsuit dealing with your imprisonment, use this format to describe the other action(s) on another sheet of paper.

1. Name(s) of the parties to this other lawsuit:  
Plaintiff(s): \_\_\_\_\_  
Defendant(s): \_\_\_\_\_
2. District Court: \_\_\_\_\_
3. Docket Number: \_\_\_\_\_
4. Name of District or Magistrate Judge to whom case was assigned: \_\_\_\_\_
5. The approximate state the action was filed in: \_\_\_\_\_

LT. SALL WAS THE HEAD SUPERVISION ON THE SCENE  
THE DAY OF (2-22-19) AS IM ON THE GROUND NOT  
RESISTING OR FIGHTING,, LT SALLS IS WATCHING  
AS ALL OTHER DEFENDANTS ARE PUNCHING AND KICKING  
ME,, VIOLATING MY RIGHTS. VIDEO OF THE SITUATION  
%100 CONFIRM THIS!



6. What was the disposition of the case?

Is it still pending? Yes \_\_\_\_\_ No \_\_\_\_\_

If not, give the approximate date it was resolved. \_\_\_\_\_

Disposition (check the boxes which apply)

☐ Dismissed (check the boxes which indicates why it was dismissed):

☐ By court sua sponte as frivolous, malicious or for failing to state a claim upon which relief can be granted;

☐ By court for failure to exhaust administrative remedies;

☐ By court for failure to prosecute, pay filing fee or otherwise Respond to a court order;

☐ By court due to voluntary withdrawal of claim;

☐ Judgment upon motion or after trial entered for

☐ plaintiff

☐ defendant

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### 5. STATEMENT OF CLAIM

For your information, the following is a list of some of the most frequently raised grounds for relief in proceedings under 42 U.S.C. § 1983 (This list does not include **all** possible claims.)

Religion	Access to the Courts	Search & Seizure
Free Speech	False Arrest	Malicious Prosecution
Due Process	Excessive Force	Denial of Medical Treatment
Equal Protection	Failure to Protect	Right to Counsel

**Please note that** it is not enough to just list the ground(s) for your action. You **must** include a statement of the facts which you believe support each of your claims.

**Fed. R. Civ. P. 8(a)** states that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of the claim asserted. Fair notice is that which will enable the adverse party to answer and prepare for trial, allow the application of *res judicata*, and identify the nature of the case so it may be assigned the proper form of trial." Simmons v. Abruzzo, 49 F.3d 83, 86 (2d Cir. 1995).

**Fed R. Civ. P. 10(b)** states that "[a]ll averments of claim...Shall be made in numbered paragraphs, the contents of which shall be limited as far as practicable to a single set of circumstances"

Attach any documents which indicate that you have exhausted your administrative remedies regarding this claim.

If your answer is no, state why you did not: \_\_\_\_\_

**B. SECOND CLAIM:** On (date of incident) 2-22-19  
defendant (give the name and position held of each defendant involved in this incident) RN  
GERALDINE M. WILSON, RN FOR DOCCS.

did the following to me (briefly state what each defendant named above did): AFTER THE 1<sup>ST</sup>  
ASSAULT ON 2-22-19, EVIDENCE SHOWS (MS. GERALDINE WILSON)  
KNEW ABOUT MY EMERGENCY NEED FOR STITCHES IN MY  
EYE LID, BUT CHOOSE TO FORGE DOCUMENTS, AND SENT ME  
BACK TO MY CELL, RATHER THEN THE HOSPITAL. SHE  
NEVER DID A PROPER EXZAMINATION, AND PHOTOS SHOW  
DISPITE HER ACCOUNTS, MY EYE LID WAS DRIPPING BLOOD!  
SHE SET THE STAGE FOR THE 2<sup>ND</sup> ASSAULT / SEXUALE ASSAULT  
AND DISPITE HER SEEING THE HOLE UP CLOSE AT MY CELL,  
SHE STILL WAITED 5 HOURS / AND AFTER 2<sup>ND</sup> ASSULT, TO REPORT  
IT! WHICH LED TO MORE MAJOR INJURIES! EIGHT, FIFTH, FOURTEENTH, AMENDMENT  
The constitutional basis for this claim under 42 U.S.C. § 1983 is: MEDICAL DELIBRAT DENIAL  
OF MEDICAL TREATMENT, EQUAL PROTECTION, FORGED GOV DOCUMENTS, LIFE  
INDIFFERENCE PAIN & SUFFERING, FAILURE TO PROTECT, MENTAL ANGUISH.  
The relief I am seeking for this claim is (briefly state the relief sought): ONE HOUNDRD MILLION  
DOLLARS.

#### Exhaustion of Administrative Remedies

According to 42 U.S.C. § 1997e(a), "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Did you grieve and/or appeal this claim:

Yes ☒ No ☐

If your answer is yes, state the result: DENIED.

Did you appeal that decision:

Yes ☒ No ☐

If your answer is yes, state the result: DENIED.

*Attach any documents which indicate that you have exhausted your administrative remedies regarding this claim.*

If your answer is no, state why you did not: \_\_\_\_\_

If you have additional claims, use the above format to set them out on additional sheets of paper.

### 6. RELIEF SOUGHT

*Summarize the relief requested by you in each statement of claim above*

\* 1<sup>ST</sup> CLAIM, TWO HOUNDRD MILLION DOLLARS.

\* 2<sup>ND</sup> CLAIM, ONE HOUNDRD MILLION DOLLARS.

THREE HOUNDRD MILLION DOLLARS IN TOTAL.


Do you want a jury trial?

Yes ☒ No ☐

**I declare under penalty of perjury that the foregoing is true and correct.**

Executed on MAY - 24 - 21  
(date)

**NOTE: Each** plaintiff must sign this complaint and must also sign all subsequent papers filed with the Court.

  
Signature(s) of Plaintiff(s)

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

-----X  
\_\_\_\_\_  
Claimant,  
**MIGUEL DIAZ**

VS.

**SMITH et al**  
-----X

Defendants.

**AFFIDAVIT OF SERVICE**

Docket No. 19-CV-1438 ( )

**DIAZ V. SMITH**

Claimant MIGUEL DIAZ, affirms under penalty of perjury the foregoing:

That he has on the 26 day of MAY, 2021, served: **NORTHERN DISTRICT COURT OF NEW YORK, PO BOX 7367, 100 S. CLINTON STREET, SYRACUSE N.Y 13261, (COURT CLERK)\*** WITH MY AMENDED PLEADINGS, FULLY AMENDED COMPLAINT, AS ORDER ON MAR-30-21 (TO BE DONE BY JULY-30-21) WITH EVIDENCE ATTACHED. ① NOTICE OF MOTION ② AFFIDAVIT IN SUPPORT OF MOTION ③ AMENDED COMPLAINT ④ EVIDENCE TO SUPPORT MY AMENDED COMPLAINT ⑤ AFFIDAVIT OF SERVICE ⑥ 5/18/21 COURT RULING & INSTRUCTIONS. with a true and accurate copy of this Claim along with my supporting by regular first class mail, by placing such in a properly sealed postage paid envelope and depositing same in a mailbox at Clinton Correctional Facility, to be mailed by the U.S. Postal Service.

Respectfully submitted,

  
\_\_\_\_\_

Claimant, *Pro Se*  
Clinton Correctional Facility  
P.O. Box 2001  
Dannemora, New York 12929

cc: File